



City of Chicago  
Richard M. Daley, Mayor

Department of Law

Mara S. Georges  
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<http://www.cityofchicago.org>

**BY EMAIL ATTACHMENT ([jhartmann@kirkland.com](mailto:jhartmann@kirkland.com))  
AND REGULAR MAIL**

January 14, 2010

John F. Hartmann, Esq.  
Kirkland & Ellis  
300 N. LaSalle Street  
Chicago, IL 60654

**Re: *Thayer v. Chiczewski*, 07 C 1290**

Dear Mr. Hartmann:

As you will recall, Magistrate Judge Keys' September 11, 2009 Memorandum Opinion and Order awarded fees and costs to the City for the discovery relating to plaintiff Andy Thayer's emails. *Thayer v. Chiczewski*, 2009 WL 2957317 (N.D. Ill. Sept. 11, 2009) at \*4. We have reviewed our work in this regard and have determined that a total of 144.5 attorney hours were expended by myself, Rebecca Hirsch, David Graver, Michael Forti and Mardell Nereim. (A breakdown of each attorney's hours can be provided if you would like.)

As to hourly rates, you are no doubt familiar with the law governing fee shifting under 28 U.S.C. § 1988, which in our view is closely analogous to the instant situation. With this as background, we propose a uniform hourly rate of \$295.00/hour, which is the City's current blended rate for outside counsel. Considering the City attorneys' capabilities and experience in work of this type, as well as the rates likely charged by you and your colleagues on behalf of AOL, we think our proposed rate is exceedingly low, and it is offered in the spirit of compromise.



EXHIBIT

18



John F. Hartmann, Esq.  
January 14, 2010

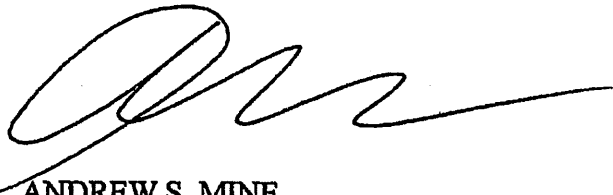
Additionally, the City advanced a total of \$3087.50 to Elijah Technologies for consultation on these electronic discovery issues. Esquire's court reporter fee for Mr. Mayrides' deposition was \$1037.68.

This comes to a total of:

Attorney time	\$42, 627.50 (144.5 hrs. x \$295.00)
Consultant time	3, 087.50
Court reporter	1, 037.68
Total	\$46, 752.68

Please feel free to contact me with any questions concerning this matter.

Sincerely,



ANDREW S. MINE  
Senior Counsel  
(312) 744-7220

cc: Paul Helms, Esq.  
Andrew Young, Esq.  
Liz Wang, Esq.



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**BY EMAIL ATTACHMENT ([jhartmann@kirkland.com](mailto:jhartmann@kirkland.com))  
AND REGULAR MAIL**

January 22, 2010

John F. Hartmann, Esq.  
Kirkland & Ellis  
300 N. LaSalle Street  
Chicago, IL 60654

**Re: Thayer v. Chiczewski, 07 C 1290**

Dear Mr. Hartmann:

I am in receipt of your letter of January 20. It would appear that your claim of "surprise" at the amount of our claimed attorneys' fees and costs stems from the mistaken impression that the City is seeking payment only for work done following the Court's September 11, 2009 ruling. In actuality, the work included in our claim was performed, in significant part, prior to that date. In our view, the costs of the discovery necessarily include the motion practice leading to the September 11 ruling. The motion and resultant ruling were the but-for and proximate causes of AOL's forced abandonment of its stonewalling tactics, leading, for the first time, to meaningful disclosure on the part of your client of relevant information about plaintiff Thayer's emails.

You also claim that it is "unclear" why our proposed compromise rate of \$295/hr. is appropriate. While we indicated that we based this proposal on the analogous situation of prevailing party fee-shifting jurisprudence, you should be aware that this analysis is applicable to situations (like this one) where attorneys fees serve as a sanction. *See, e.g., Whitehead v. Gateway Chevrolet, Oldsmobile, Inc.*, 2004 WL 1073642 (N.D.Ill. May 7, 2004) at \*1.

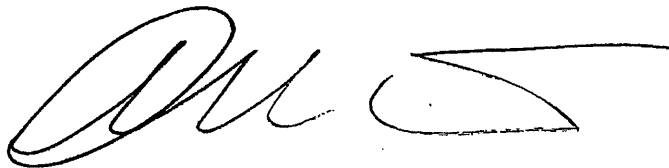


John F. Hartmann, Esq.  
January 22, 2010

We did volunteer to make our backup tabulations available, and consistent with that commitment these are attached. Our offer to compromise at the proposed amount of \$46,752.68 stands. As we indicated, this proposal is generously low and represents a significant discount from the market rates to which we would be entitled under applicable law. In the event this matter remains contested and needs to be resolved by the Court, we anticipate seeking full market rates, with reference to, *inter alia*, the work performed by your firm's attorneys on the other side of this matter.

I look forward to your thoughts on the above.

Sincerely,

A handwritten signature in black ink, appearing to read 'AMINE', with a long horizontal flourish extending to the right.

ANDREW S. MINE  
Senior Counsel  
(312) 744-7220

cc: Paul Helms, Esq.  
Andrew Young, Esq.  
Liz Wang, Esq.

**AOL Discovery Hours - Andrew Mine**

7/28/09	Motion to compel; research and drafting	2.00
7/29/09	Motion to compel; research and drafting	2.00
7/30/09	Motion to compel, edit	1.00
7/31/09	Motion to compel, finalize and file	1.00
8/05/09	Mag. Keys, hearing on motion to compel	1.00
8/19/09	Review response and emails	1.00
8/22/09	Review Wang letter, emails	1.00
8/24/09	Review draft reply, emails	1.50
8/25/09	Review reply, emails	1.00
8/28/09	Review emails, surreply/motion to strike	1.00
9/09/09	Hearing, Mag. Judge Keys	1.00
9/10/09	Review and discuss K&E correspondence	1.00
9/15/09	Review Mag. Judge Keys opinion	1.00
9/16/09	Review letter to K&E	0.25
9/18/09	Review correspondence	1.00
9/21/09	Review AOL Response to RTC	2.00
9/25/09	Prepare for deposition	2.00
9/28/09	Prepare for deposition	2.00
9/29/09	Review correspondence; prepare for deposition	3.50
9/30/09	Mag. Judge Keys, hearing on show cause; prepare for deposition	4.00
10/01/09	Final prep and take Mayrides deposition	5.00

10/06/09	Review transcript, draft letter to Hartmann	2.00
10/09/09	Review Hartmann letter	0.50
10/14/09	Motion to extend AOL discovery	0.50
11/11/09	Review Wang production	0.50

<b>Total Hours</b>		<b>38.75</b>
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**Breakdown of AOL Discovery Hours – Rebecca Alfert Hirsch**

7/29/09	Review/edit motion to compel prepared by Mr. Mine	1.00
8/19/09	Review response to motion to compel filed by L&L; confer with Mssrs. Graver and Forti re: issues for reply brief	4.50
8/20/09	Conduct legal research re: reply brief; outline issues to raise with expert	3.00
8/21/09	Attend hearing before magistrate to discuss discovery issues including briefing on motion to compel; review correspondence from Ms. Wang to court regarding AOL emails; conduct research for reply brief	2.75
8/22/09	confer with Mssrs. Mine and Graver re: AOL email issue and letter to court.	1.00
8/24/09	Revise/edit reply brief drafted by Mr. Graver; meet and confer with Mssrs. Graver and Forti and Ms. Nereim re: breif and expert affidavit.	5.50
8/25/09	Continue to review/revise reply brief; confer with Mssrs. Mine, Graver and Forti re: same	8.00
8/26/09	Prepare final revisions to reply brief.	3.25
8/27/09	Review surreply filed by Plaintiff	1.50
8/28/09	Conferred with Mssrs. Forti, Graver and Mine (via email) and Ms. Nereim re: surreply; edit/revise motion to strike	2.00
9/10/09	Review letter from AOL's counsel to court; confer about same with other City attorneys.	1.00
9/14/09	Read Magistrate J Keys ruling	1.00
9/18/09	Review AOL counsel letter to court re: order to show cause.	1.25
9/29/09	Review correspondence from AOL and L&L re: AOL email production	.50
9/30/09	Attend magistrate judge hearing on AOL discovery	1.00

10/01/09      Attend deposition of AOL representative

2.00

**Total: 39.25**



Time Allocation for AOL discovery issues  
**David Graver**, assistant corporation counsel

Date	Task	Hours
7/30/09	Reviewed motion to compel	.50
8/5/09	In court for motion to compel	1.00
8/19//09	Reviewed response to motion to compel, 9:30-5:30	7.00
8/20/09	Contacted expert, research on reply, 10:00-6:00	7.00
8/21/09	Worked on reply brief, 10:00 am to 7:00 pm	6.00
8/22/09	Worked on reply brief, 1:30 pm to 6:30 pm	5.00
8/23/09	Worked on reply brief, 5:40 pm to 1:40 am	8.00
8/24/09	Email discussion of brief with other attorneys, 11:55	.50
8/25/09	Short meeting with other attorneys, reviewed affidavit, revisions to draft of reply brief, 9:00 am to 9:45 pm	8.00
8/26/09	Final revisions and filed reply brief, 9 am to 3 pm	6.00
8/27/09	Evaluating surreply filed by Plaintiff at 5:54 pm, 6-9:40 pm	3.00
8/28/09	Research, writing, discussion of response to Plaintiff's surreply 10:15-12:30, wrote motion to strike, 12:30-2:30 researched issues and revised motion filed motion to strike surreply at 2:28 pm	4.00
9/9/09	Magistrate Judge Keys, status hearing on motion to compel	1.00
9/10/09	Letter from Kirkland/Ellis, discussion	.50
9/14/09	Review Judge Keys ruling	1.00
9/15/09	Phone call from Kirkland/Ellis, discussion	.50
9/16/09	Letter to Kirkland/Ellis	.50
9/18/09	Evaluation of AOL response to court, research	2.00

9/25&28/09	Phone calls to Kirkland/Ellis regarding deposition	.25
9/30/09	Magistrate Judge Keys, hearing on AOL discovery	1.00
10/19/09	Magistrate Judge Keys, hearing on AOL discovery, extension	.50
11/13/09	Magistrate Judge Keys, AOL discovery status hearing	.25
<b>Total Hours, David Graver:</b>		<b>63.50</b>

**AOL Discovery Hours - Mardell Nereim**

8/31/09	Review filings and discuss strategy with Thayer team	1.00
9/15/09	Read Keys ruling and discuss additional discovery	.50

**AOL Discovery Hours - Michael Forti**

8/27/09	Review of surreply filed by Plaintiff and discussions with Hirsch re: strategy	.50
8/28/09	Review of motion to strike surreply and discussions re: overall strategy with Thayer team	.50
9/15/09	Read Keys ruling and consider additional discovery	.50